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HOUSE BILL 454

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Manuel G. Herrera

AN ACT

RELATING TO FIREWORKS; ALLOWING MUNICIPALITIES AND COUNTIES TO RESTRICT OR BAN THE SALE OF ALL FIREWORKS; CHANGING THE TIMES FIREWORKS MAY BE SOLD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-2C-7 NMSA 1978 (being Laws 1989, Chapter 346, Section 7, as amended) is amended to read:

"60-2C-7. PERMISSIBLE FIREWORKS. --

A. Permissible fireworks are:

(1) ground and hand-held sparkling and smoke devices:

- (a) cone fountains;**
- (b) crackling devices;**
- (c) cylindrical fountains;**
- (d) flitter sparklers;**

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- (e) ground spinners;
- (f) illuminating torches;
- (g) toy smoke devices; and
- (h) wheels;

(2) aerial devices:

- (a) aerial spinners;
- (b) helicopters;
- (c) mines;
- (d) missile-type rockets; ~~[and]~~
- (e) roman candles;
- (f) shells; and
- (g) stick-type rockets, except as

provided in Subsection B of this section; and

(3) ground audible devices:

- (a) chasers; and
- (b) firecrackers.

B. Stick-type rockets having a tube less than a one-quarter-inch inside diameter are not permissible fireworks.

C. A municipality or county ~~[shall not]~~ may by ordinance regulate and prohibit the sale or use of any ~~[permissible]~~ firework ~~[except aerial devices and ground audible devices]. "~~

Section 2. Section 60-2C-8 NMSA 1978 (being Laws 1989, Chapter 346, Section 8, as amended) is amended to read:

"60-2C-8. RETAIL SALES OR STORAGE OF FIREWORKS--REGULATED

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1 ACTIVITIES. --

2 A. No fireworks may be sold at retail without a
3 retail permit. The permit shall be at the location where the
4 retail sale takes place.

5 B. It is unlawful to offer for sale or to sell
6 [any] fireworks to children under the age of sixteen years or
7 to [any] an intoxicated person.

8 C. At all places where fireworks are stored, sold
9 or displayed, the words "NO SMOKING" shall be posted in letters
10 at least four inches in height. Smoking, open flames and any
11 ignition source are prohibited within twenty-five feet of [any]
12 fireworks stock.

13 D. No fireworks shall be stored, kept, sold or
14 discharged within fifty feet of [any] a gasoline pump or
15 gasoline bulk station or [any] a building in which gasoline or
16 volatile liquids are sold in quantities in excess of one
17 gallon, except in stores where cleaners, paints and oils are
18 handled in sealed containers only.

19 E. All fireworks permittees and licensees shall
20 keep and maintain upon the premises a fire extinguisher bearing
21 an underwriters laboratories incorporated rated capacity of at
22 least five-pound ABC per five hundred square feet of space used
23 for fireworks sales or storage.

24 F. A sales clerk who is at least sixteen years of
25 age shall be on duty to serve consumers at the time of purchase

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1 or delivery. Permissible fireworks may be offered for sale
2 only at state-permitted or state-licensed retail locations.

3 G. No fireworks shall be discharged within one
4 hundred fifty feet of ~~any~~ a fireworks retail sales location.

5 H. No fireworks shall be sold or used on state
6 forest land.

7 I. No person shall ignite ~~any~~ fireworks within a
8 motor vehicle or throw fireworks from a motor vehicle, nor
9 shall any person place or throw ~~any~~ ignited ~~article of~~
10 fireworks into or at a motor vehicle or at or near ~~any~~ a
11 person or group of people.

12 J. ~~Any~~ Fireworks devices that are readily
13 accessible to handling by consumers or purchasers in a retail
14 sales location shall have their exposed fuses protected in a
15 manner to protect against accidental ignition of an item by a
16 spark, cigarette ash or other ignition source. If the fuse is
17 a thread-wrapped safety fuse which has been coated with a
18 nonflammable coating, only the outside end of the safety fuse
19 shall be covered. If the fuse is not a safety fuse, then the
20 entire fuse shall be covered.

21 K. Permissible fireworks may be sold at retail
22 between June 20 and July 6 of each year ~~and six days preceding~~
23 ~~and including new year's day and three days preceding and~~
24 ~~including Chinese new year, the sixteenth of September and~~
25 ~~cinco de Mayo of each year, except that permissible fireworks~~

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1 ~~may be sold all year in permanent retail stores whose primary~~
2 ~~business is tourism]. "~~

3 Section 3. Section 60-2C-8.1 NMSA 1978 (being Laws 1997,
4 Chapter 17, Section 9, as amended) is amended to read:

5 "60-2C-8.1. EXTREME OR SEVERE DROUGHT CONDITIONS--
6 RESTRICTED SALE AND USE. --

7 A. The governing body of a municipality may hold a
8 hearing to determine if fireworks restrictions should be
9 imposed within the boundaries of the [incorporated]
10 municipality affected by extreme or severe drought conditions.
11 The findings of the governing body shall be based on current
12 drought indices published by the national weather service and
13 any other relevant information supplied by the United States
14 forest service.

15 B. Pursuant to any hearing under Subsection A of
16 this section, the governing body of a municipality shall issue
17 a proclamation declaring extreme or severe drought conditions
18 within the boundaries of the [incorporated] municipality if the
19 governing body determines such conditions exist. The governing
20 body's proclamation

21 [~~(1) shall ban the sale and use of~~
22 ~~missile type rockets, helicopters, aerial spinners, stick type~~
23 ~~rockets and ground audible devices within the affected drought~~
24 ~~area; and~~

25 ~~(2) shall give the governing body the power~~

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1 to:

2 ~~(a) limit the use within its~~
3 ~~jurisdiction of any fireworks not listed in Paragraph (1) of~~
4 ~~this subsection to areas that are paved or barren or that have~~
5 ~~a readily accessible source of water for use by the homeowner~~
6 ~~or the general public;~~

7 ~~(b) ban the use of all fireworks within~~
8 ~~wildlands in its jurisdiction, after consultation with the~~
9 ~~state forester; and~~

10 ~~(c)]~~ may ban or restrict the sale or use
11 of ~~[display]~~ fireworks within the municipality.

12 C. The municipal governing body's proclamation
13 declaring an extreme or severe drought condition shall be
14 issued no less than twenty days prior to a holiday for which
15 fireworks may be sold. The proclamation shall explain
16 restrictions on the sale or use of fireworks and permitted
17 sales or uses of fireworks.

18 D. A municipal governing body's proclamation shall
19 be effective for thirty days and the governing body may issue
20 succeeding proclamations if extreme or severe drought
21 conditions warrant. A proclamation may be modified or
22 rescinded within its thirty-day period by the governing body
23 upon conducting an emergency hearing to determine if weather
24 conditions have improved.

25 E. The governing body of a county may hold a

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1 hearing to determine if fireworks restrictions should be
2 imposed within the unincorporated portions of the county
3 affected by extreme or severe drought conditions. The findings
4 of the governing body shall be based on current drought indices
5 published by the national weather service and any other
6 relevant information supplied by the United States forest
7 service.

8 F. Pursuant to any hearing under Subsection E of
9 this section, the governing body of a county shall issue a
10 proclamation declaring extreme or severe drought conditions
11 within the unincorporated portions of the county if the
12 governing body determines such conditions exist. The governing
13 body's proclamation

14 ~~[(1) shall ban the sale and use of~~
15 ~~missile-type rockets, helicopters, aerial spinners, stick-type~~
16 ~~rockets and ground audible devices within the affected drought~~
17 ~~area; and~~

18 ~~(2) shall give the governing body the power~~
19 ~~to:~~

20 ~~(a) limit the use within its~~
21 ~~jurisdiction of any fireworks not listed in Paragraph (1) of~~
22 ~~this subsection to areas that are paved or barren or that have~~
23 ~~a readily accessible source of water for use by the homeowner~~
24 ~~or the general public;~~

25 ~~(b) ban the use of all fireworks within~~

1 ~~wildlands in its jurisdiction, after consultation with the~~
2 ~~state forester; and~~

3 (e)] may ban or restrict the sale or use
4 of [~~display~~] fireworks in the unincorporated portion of the
5 county.

6 G. The county governing body's proclamation
7 declaring an extreme or severe drought condition shall be
8 issued no less than twenty days prior to a holiday for which
9 fireworks may be sold. The proclamation shall explain
10 restrictions on the sale or use of fireworks and permitted
11 sales or uses of fireworks.

12 H. Except as otherwise provided in this subsection,
13 a proclamation shall be effective for thirty days, and the
14 county governing body may issue succeeding proclamations if
15 extreme or severe drought conditions warrant. A proclamation
16 may be modified or rescinded within its thirty-day period by
17 the governing body upon conducting an emergency hearing to
18 determine if weather conditions have improved. "